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June 9, 2004

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: In the Matter of Amendment of Section 73.202(b)
Table of Allotments, FM Broadcast Stations
(Smiley, Texas)
MB Docket No. 02-248; RM-10537
Opposition to Reinstatement of Interest**

Dear Ms. Dortch:

LBR Enterprises, Inc. (FRN: 0003-7790-22), the licensee of KZRC(FM), Markham, Texas (FCC Facility ID No. 87439), by its attorneys and pursuant to the Notice of Proposed Rule Making, DA 02-2061, MB Docket No. 02-248, RM-10537, released August 30, 2002, hereby submits an original and four (4) copies of its Opposition to Reinstatement of Interest in the above-referenced rulemaking proceeding.

Should any questions arise concerning this matter, please communicate with this office.

Respectfully submitted,

Michael H. Shacter

Enclosure

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DOCUMENT INDEX TERMS

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DOCUMENT INDEX TERMS

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4. Name of Applicant/Petitioner (last, first, mi) (25) **LBR Enterprises, Inc.**
5. Law Firm Name (25) **Womble Carlyle Sandridge & Rice**
6. Attorney/Author Name (last, first, mi) (25) **Shacter, Michael**
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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 02-248
Table of Allotments,)	RM-10537
FM Broadcast Stations,)	
<u>(Smiley, Texas)</u>)	

To: Chief, Audio Division

OPPOSITION TO REINSTATEMENT OF INTEREST

LBR Enterprises, Inc. ("LBR"), by its attorneys, hereby submits its opposition to the so-called **Reinstatement of Interest** filed by Linda Crawford ("Crawford") on May 27, 2004.

Background

On April 6, 2004, Crawford withdrew from this proceeding, stating that she had "decided not to pursue a station in Smiley, Texas at this time". On May 27, in a complete about-face, she filed her so-called **Reinstatement of Interest** in which she announces to the Commission that she "reinstates" her interest in the Smiley station. What is most notable about this behavior is the complete absence of seriousness the public has a right to expect from the proponent for a new station. Crawford cannot simply announce that she is rejoining this proceeding without first receiving Commission consent. To grant this pleading will undermine Commission resources and will unnecessarily delay Commission deliberations. In contrast to the *continuing* interest required in an allotment rule making proceeding, Crawford has only displayed *wavering* interest. The pleading should be denied.

I. CRAWFORD'S REINSTATEMENT OF INTEREST IS FATALLY FLAWED AND SHOULD BE DENIED.

As a threshold matter, it should be clear that a petitioner before the Commission does not have the right or the authority to unilaterally reinstate anything. She may petition the Commission to allow her to take a course of action, but she may neither dictate actions to the Commission nor pursue a course of action without permission. After having withdrawn from this proceeding, Crawford should have petitioned for leave to rejoin. The fact that she failed to petition for leave to rejoin this proceeding must be the first step in analyzing whether to deny her pleading.

LBR does not propose that the Commission elevate form over substance. In certain circumstances, it may be appropriate for the Commission to assist an inexperienced petitioner. But Crawford is no neophyte. She is the proponent of eight of the rule makings in the Notice of Proposed Rule Making with which this proceeding was commenced. Moreover, she is represented by counsel.

If Crawford's Reinstatement of Interest were otherwise satisfactory in substance, it might be appropriate to ignore, accommodate, or forgive the violation of procedure. But aside from the arrogant nature of the Reinstatement of Interest, its most notable characteristic is the complete lack of substance. There is no explanation for this extraordinary behavior.

In her Sworn Affidavit, Crawford states that she has "not been paid or promised any money or other consideration in exchange for either [her] withdrawal of interest or this reinstatement of interest". In the context of these proceedings, this statement may be necessary but is hardly sufficient to justify Crawford's reinstatement in this proceeding. Completely absent from her statement is any account of what caused her to withdraw or what prompted her to

attempt to rejoin it. If anything, as discussed below, this erratic behavior justifies the conclusion that Crawford is not a suitable applicant for a Smiley allotment.

There is a natural impulse to give a person the benefit of the doubt. This instinct derives from our sense of fairness, which underpins the rulemaking process. But fairness must be applied evenhandedly. It is not fair to the public or to other participants in this proceeding to allow Crawford to treat the proceeding as a play toy.

At the time of her withdrawal, this proceeding had reached the deliberative stage. By first filing a withdrawal, followed by her current pleading, Crawford has deliberately thrown this proceeding into disarray. Instead of awaiting a decision on the merits, the parties face another round of pleading. All of this occurs at the expense of the listening audience. More significantly, these digressions sidetrack scarce Commission resources. Instead of reaching a decision on the merits, the Commission is reduced to playing games with one of its petitioners.

This proceeding is approaching its third anniversary. From an objective review of the merits, it is obvious that Crawford's proposal is far inferior to the counter-proposals. Regardless of its intent, the only effect of Crawford's pleading will be to waste time. The Commission cannot allow Crawford to make a mockery its procedure. The Reinstatement of Interest must be denied.

II. CRAWFORD'S BEHAVIOR DEMONSTRATES HER UNSUITABILITY AS A PROPONENT IN THIS PROCEEDING.

It should be noted that Crawford is not merely a participant in this proceeding—she is the proponent. This proceeding was initiated more than two and a half years ago, on October 3, 2001, when Crawford submitted her Petition for Rule Making. In response, the Commission issued a

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Notice of Proposed Rule Making on August 30, 2002. Crawford then submitted her comments on September 17, 2002

Crawford's lack of seriousness was demonstrated as early as her first comments in this proceeding. The first line of her comments states:

Petitioner respectfully submits...[set forth presentation in the petition]

The ellipsis and brackets are in the original. It is obvious that Crawford is working off an assembly-line form. She is proposing dozens of new stations, assigned to tiny communities, which she is unlikely to have sufficient resources to build.

As discussed above, Crawford's Reinstatement of Interest contains no justification for the Commission to permit her to rejoin this proceeding. There is nothing approaching the good cause that the public has the right to expect in serious deliberations. If the Commission were to grant this request it would have to infer certain conclusions on the petitioner's behalf. Crawford is already implicitly requesting that her pleading be treated as a petition for leave to rejoin the proceeding. Even if the Commission is willing to take this step on Crawford's behalf, it must also infer some good cause to justify the grant of the petition. A reasoned analysis of her behavior, however, can lead to only one conclusion: Crawford is not a proper candidate as the proponent of a new FM station.

The Notice of Proposed Rule Making with which this proceeding was initiated required a showing of *continuing* interest from the petitioner. In contrast, what the Commission has received from Crawford is a showing of *wavering* interest. Her contempt for the Commission's rules, for the public interest, and for the dignity of the rule making process evidence her unsuitability as a participant in this rule making. The requirement that a proponent *express its*

present intention to apply for a new channel if it is allotted and, if authorized, to build the station promptly is one of the most important foundations of the process by which new channels are allotted. A proponent is required to express its intention both before a rule making is initiated and after it has commenced. With licensees such as LBR, which are committed to bringing FM broadcast stations to a wider audience; there is no room in the process for dilettantes.

The Commission must take Crawford at her word when she stated that she "decided not to pursue a station in Smiley, Texas at this time". The Reinstatement of Interest should be denied.

Conclusion

Crawford's pleading is a diversionary tactic that undermines the deliberative process. Having withdrawn from this proceeding, she may not rejoin without first receiving Commission consent. Her behavior offers ample evidence of her unsuitability as a proponent in this proceeding. The Reinstatement of Interest should be denied.

Respectfully submitted,

LBR Enterprises, Inc.

June 9, 2004

By:



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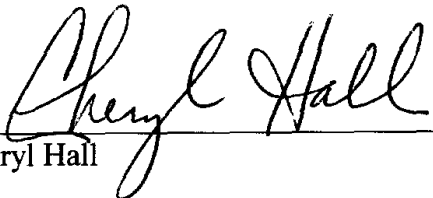
CERTIFICATE OF SERVICE

I, Cheryl Hall, a secretary in the law firm of Womble Carlyle Sandridge & Rice, PLLC, do hereby certify that true copies of the foregoing "Opposition" were sent this 9th day of June, 2004 by U.S. first class mail, postage prepaid, to the following:

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Cheryl Hall